

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARA LESLIE ALEXANDER,)	
et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 96-2123
)	97-1288
)	(RCL)
FEDERAL BUREAU OF)	
INVESTIGATION, et al.,)	
)	
Defendants.)	
_____)	

ORDER

Plaintiffs, on February 19, 2000, filed with this court substantial evidence revealing the existence of the Mail2 problem involving thousands of missing e-mails that were never captured on the White House's Automated Records Management System, or ARMS. Plaintiffs also filed evidence that the defendants provided false statements to this court about the e-mails, as well as evidence of an effort to obstruct justice through threats and intimidation to ensure that witnesses did not reveal this Mail2 problem. Plaintiffs noted that Daniel A. Barry, who had been designated by the White House as its witness on e-mail issues, had provided an affidavit to this court on March 4, 1998, in which he did not reveal the Mail2 problem, which he apparently did know about at the time. Mr. Barry was deposed by plaintiffs on June 11, 1998, and thereafter provided another affidavit to this court on July 9, 1999. In that affidavit, Mr. Barry said that

"[s]ince July 14, 1994, e-mail within the EOP system administered by the Office of Administration has been archived by the EOP Automated Records Management System (ARMS). With this current system, this e-mail is susceptible to being word-searched"

Defendant Executive Office of the President admits that it learned, at least by May 1998, that certain incoming e-mails were not placed on ARMS beginning in August 1996, but are now available for retrieval from back-up tapes. EOP apparently corrected this "computer error" in November 1998, but never notified this court and never started a project to retrieve these e-mails until after the plaintiffs filed their motion with this court on February 19, 2000.

Plaintiffs sought an evidentiary hearing, listing those individuals they seek to call as witnesses. Some of these witnesses have now testified in Congressional hearings, and transcripts of their testimony have been filed with the court.

Defendant Executive Office of the President filed a motion on March 23, 2000, to stay consideration of plaintiffs' request for an evidentiary hearing, and announced that the Justice Department's Criminal Division Campaign Financing Task Force had undertaken a criminal investigation of these matters. This court has proceeded cautiously since that time to ensure that these proceedings do not interfere with the criminal investigation. The court has received a series of ex parte, in camera briefings from those conducting the

criminal investigations. These briefings have been conducted on the record, and sealed transcripts are available for appellate review. The dates of these briefings have already been placed on the public record. Another briefing was held beginning at 5:00 p.m. yesterday. At that time, the court was advised that the criminal investigation has reached a stage where further inquiry by the Civil Division attorneys, representing the defendants in this case, and this court, can recommence without threatening the integrity of the criminal investigation or other law enforcement interests.

Because the facts are clearly in dispute and cannot be resolved without a hearing, the court has decided to grant plaintiffs' request for an evidentiary hearing. It shall commence at 10:00 a.m. on July 31, 2000. A hearing shall be held at 10:00 a.m. on July 27, 2000, to decide on witnesses and procedures for the evidentiary hearing. At that time, the court will also complete the evidentiary hearing it now has underway to determine the most expedient way to produce the non-ARMS e-mail in accordance with this court's July 10, 2000 order.

SO ORDERED.

Date:

Royce C. Lamberth
United States District Court